

REMARKS

This Response is submitted in reply to the Final Office Action dated January 13, 2005, having a shortened statutory period set to expire March 13, 2005. No amendments to the claims have been made.

Claim Rejections -- 35 U.S.C. §103

In section 3 of the present Office Action, Claims 9-12 have been rejected under 35 U.S.C. §103(a) as being unpatentable over *Logue, et al.* (U.S. Patent No. 5,935,207) in view of *Shannon* (U.S. Patent No. 5,582,713). That rejection is respectfully traversed and reconsideration of the Claims is requested.

As recited in exemplary Claim 9 in the present application, the method includes the steps of, *inter alia*:

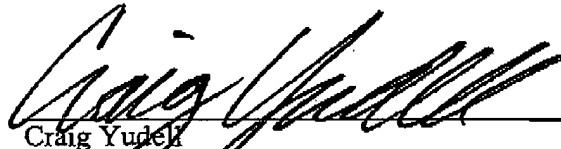
"forwarding said file to said remote server when said file has been locally modified, and deleting said file and information according to which said file is locally stored after said file has been modified and forwarded"

While the combined system of the prior art references *Logue* and *Shannon* fails to disclose deleting the file and the information according to which the file is locally stored after the file has been modified and forwarded, that nonetheless it is argued on page 3 of the present Office Action that, such would be obvious to someone of ordinary skill in the art. The Examiner that "deleting a file and its information after a file has been modified and forwarded is notoriously well known in the art." Applicants respectfully disagree. As is typically understood in the art, forwarding a file to a remote server when the file has been locally modified is commonly used to create backup file systems and to maintain coherency between network systems. For example, *Shannon* is clearly teaching a computer data file backup system for generating an image of a client's hard drive at a remote system. There is no known system in the prior art that forwards a modified file to a remote server and then deletes the file and information from the local system. The fact that the Examiner was unable to find a prior art reference disclosing such a step is clear evidence that such is not known or obvious in the art. Further, the

•Examiner's suggestion that such a step is notoriously well known in the art suggests that the Examiner is improperly using hindsight of the present application in order to find the present invention obvious. The teaching or suggestion to make the claim combination and the reasonable expectation of success must both be found in the prior art, not based on Applicants' disclosure. (See *In re Vaack*, 947 F.2d 488, 20 USPQ 2d 1438 (Fed. Cir. 1991)). Rejections based on 35 U.S.C. §103(a) must rest on a factual basis. *In re Warner*, 379 F.2d 1011, 1017, 154 USPQ 173, 178 (CCPA 1967), *cert. denied*, 389 U.S. 1057 (1968), *reh'g denied*, 390 U.S. 1000 (1968). In making such a rejection, the examiner has the initial duty of supplying the requisite factual basis and may not, because of doubts that the invention is patentable, resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in the factual basis. *Id.* In this regard, the mere facts that the prior art could be so modified does not suffice. See *In re Gordon*, 733 F.2d, 900, 902, 221 USPQ 1125, 1127, (Fed. Cir. 1984).

Consequently, Applicants specifically request that this unsupported obviousness rejection be withdrawn, or that a reference or references, including the required motivation to modify or combine in a manner that achieves the claimed subject matter, be provided in support thereof.

Respectfully submitted,



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